

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 395 OF 2005

The 31st July, 2007

CORAM:

**HON'BLE Ms. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. KBS RAJAN, MEMBER JUDICIAL**

1. M.R. Sukumaran,
S/o MK Ramakrishnan,
Sr. Tax Assistant,
O/O the Asst. Commissioner of Central
Excise & Customs, Trichur Division,
Residing at Mandoli House, PO Anjuoor, Mundoor, Trichur-780 549.
2. Biju, P Raphael, S/o PJ Rapheal,
Tax Assistant,
O/O the Asst. Commissioner of Central Excise
& Customs, Trichur Division, Trichur,
Residing at Paliakkara Hosue, Chiyaram, PO Trichur.

.. Applicants

(By Advocate: Ms. Simla for Mr. Shafik MA)

-Versus-

1. Union of Indian,
Represented by Secretary,
Department of Revenue, Ministry of Finance, New Delhi.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.
3. The Chief Commissioner of Customs & Central Excise,
Kerala Zone, Central Revenue Building,
IS Press Road, Cochin -682018.
4. The Commissioner of Customs & Central Excise,
Kerala Zone, Central Revenue Building,
IS Press Road, Cochin 862 018.

5. Monson Varghese,
S/o EK Varghese, Sr. Tax Assistant,
O/O the Deputy Commissioner of Central Excise,
Service Tax Division, CE Bhawan, Kathrunkadavu,
Kochi-17, Residing at FSI Quarter Type II-U-1,
Francis Xavier Church Road, Kochi-18.

6. Asha S. W/o AR Santhosh,
Customs Preventive Commissionerate,
CR Building, IS Press Road, Kochi-18.
Residing at Kalathil, Ammankovil Road, Kochi-35.

... Respondents

(By Advocate Mr PM Saji, ACGSC for Respondents 1 to 4
Mr. TCG Swami for Respondents 5 and 6)

The application having been heard on 16th July, 2007 the Tribunal delivered the following:

ORDER

(By Ms. Sathi Nair, Vice Chairman)

This application is directed against the Annexure-A/1 order No.F.No.34011/13/2004-Ad.III.A dated 17th March, 2005 allegedly issued against the provisions of the Recruitment Rules and seeking further declaration that the essential qualifications prescribed in the Recruitment Rules cannot be diluted or relaxed by issuing executive instructions.

2. The applicants are erstwhile Ministerial cadre officials working as Upper Division Clerk and Lower Division Clerk,

now re-designated as Tax Assistant and Sr. Tax Assistant, consequent on cadre restructuring in 2001. Rule 4(2) of the Recruitment Rules of Tax Assistant under Rule specified that "The person holding the post of Data Entry Operator Grade-A appointed under these rules as Tax Assistant shall, within two years from the date of such appointment as Tax Assistant, pass the Departmental Examination as conducted by the competent authority, failing which he shall not be entitled to get any further increment." Likewise, as per the provisions of the Recruitment Rules of Senior Tax Assistant under Rule 5(v) it is specifically mentioned that "the present employees would be required to pass the required or suitable departmental examination, as specified by the competent authority, from time to time, in computer application and relevant procedures within two years failing which they would not be eligible for further increments." The 1st respondent by Annexure-A/8 letter dated 22.6.2004 stated that the ministerial officers are required to pass two examinations; one for completion of probation in the entry grade which is to be conducted by DGICCE and the other

for promotion to the higher grades which is to be conducted by NACEN. This clarification is re-iterated by the Ministry's letter dated 18.8.2004 (Annexure-A/9) and further confirmed by the Ministry's letter dated 7.1.2005 (Annexure-A/10) that Tax Assistants, who are re-designated from the cadre of DEOs, are required to pass the confirmation examination as per DOP&T's instructions contained in OM No.18011/ 3/88-Estt(D) dated 24.9.1992 which provide that "further confirmation in the new entry grade becomes necessary because the new post may not be in the same line or discipline as the old post in which he has been confirmed and the fact that he was considered suitable for continuance in the old post would not automatically make him suitable for continuance or confirmation in the new post, the job requirement of which may be quite different from those of the old post. "Some of the DEO re-designated Tax Assistants, who had been promoted as Senior Tax Assistants, challenged the above clarifications by filing Original Application No. 104/2005 before this Tribunal, but the same had been closed. Thereafter, it is alleged that the respondents had issued the impugned

Annexure-A/1 order due to undue pressure exerted by a group, practically nullifying the Rule 4(2) of the Tax Assistants Recruitment Rule and all its earlier clarifications so far mentioned.

3. The following additional grounds are also urged by the applicants that the Annexure-A/1 order is an executive order which modified the specific requirement and essential qualifications prescribed by Annexure-A/2 Recruitment Rules; that the Recruitment Rules can not be varied or amended by the executive orders. In support of their case, the applicants placed reliance on the judgment of the Apex Court reported in (1997) 4 SCC 301. The applicants have further contended that merger of two distinctive cadres i.e. the ministerial cadre and technical cadre of Data Entry Operators, as one cadre, was done only on the basis of the pay scale; and that the principles laid down by the Hon'ble Supreme Court in the matter of equalization of posts were not followed. The respondents are showing a partisan attitude to the Ministerial Cadres right from the beginning. Though in the Draft Recruitment Rules the seniority of the Data

Entry Operators was shown to be fixed below the UDCs and above the LDCs, when the Recruitment Rule was finally published, reckoning of seniority was fixed as per the data of entry into the Department. The seniority of the Data Entry Operators was hurriedly fixed as per their date of entry into the Department and even the Data Entry Operators had challenged the promotions given to the Ministerial Cadres, prior to publication of the Recruitment Rules, by filing Original Applications. Thereafter, the Ministry by order No. F. No.A.32011/ 18/2003-Ad. III.A dated 8.10.2003, relaxed the Rules and the Department promoted 35 Tax Assistants (DEO Gr.A) to the grade of Senior Tax Assistant on adhoc basis vide order dated 17.10.2003 without they passing the stipulated examination as per Rule 4(2) for the Recruitment Rules of Tax Assistant. In view of the above, the applicants sought for directions to declare that the essential qualifications prescribed by the recruitment rules cannot be diluted or relaxed by issuing executive orders and to direct the 2nd respondent to review the DPCs already held for promotion to the cadre or Senior Tax

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Assistants and to promote the applicants in the place of ineligible officers by reverting them, if necessary and to direct the respondents to consider the applicants for promotion to the post of Senior Tax Assistants against the vacancies of Sr. Tax Assistants available on restructuring.

4. With regard to the Annexure-A/1 of the application, the respondent have submitted reply statement wherein it has been stated that they have not removed the essential requirement of passing a departmental examination prescribed for confirmation as per the Recruitment Rules; admittedly they had promoted some Data Entry Operators on adhoc basis subject to the condition that the officers should pass the departmental examination by 31.12.2003 and if they do not pass the departmental examination, they would stand reverted. This was done in accordance with the Annexure-R/1 order No.A.32011/18/2003-Ad III-A dated 8.10.2003. In regard to the contention regarding waiver of confirmation examination, it is submitted by the respondents that Annexure-A/1 does not waive any confirmation examination prescribed in the

Recruitment Rules, but it has only modified certain earlier clarifications given and it is not issued due to any undue pressure exerted by any group as alleged. Confirmation status of a Government servant cannot be taken away on re-structuring of cadres and confirmation examination is to be cleared within the probation period of two years from the date of appointment at the entry grade. He/she is required to be confirmed again only if he/she is appointed to a post on direct recruitment basis either in the same department or in a different department. Data Entry Operators, re-designated as Tax Assistants, who were seniors to the applicants, were promoted as Senior Tax Assistants. Hence the contention of the applicants that the erstwhile Data Entry Operators were accommodated to the post of Senior Tax Assistants without being eligible is not correct. Since Tax Assistants and Senior Tax Assistants who were re-designated in their cadre and were confirmed in the pre-restructured cadre need not have to write any confirmation examination on restructuring. Annexure-A/1 was issued only to clarify this position. Rule 4(2) of the Recruitment Rules pointed out by the

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applicants has not prescribed any examination for confirmation. It is a departmental examination conducted for the purpose as stated in the Recruitment Rule itself. Hence, Annexure-A/1 neither nullifies any provisions of the Recruitment nor does it amend the Recruitment Rules by way of any administrative orders. It is further submitted that Government of India has taken a policy decision to merge two cadres i.e. Ministerial and Data Cadre Operators as one cadre and the applicants have not challenged the merger in this original application. The order of the Chennai Bench of the Tribunal was challenged before the Hon'ble High Court of Tamil Nadu, which is still pending for adjudication. It is emphatically denied by the respondents that they have been pressured to the extent where the provisions in the Recruitment Rules itself were given a go by to promote a group of ineligible officials.

5. Rejoinder has been filed by the applicants re-iterating the earlier contentions and pointing out that the respondents have not clearly stated why the DEOs are not subjected to the examinations specified under Rule 4(2) and Rule 5(v) of the

Recruitment Rules of Tax Assistant and Senior Tax Assistants, whereas Annexure-R/1 was issued in terms of promotion examinations only.

6. We have heard Ms Simla, learned counsel for the applicants, Mr PM Saji, learned Asstt. CGSC for Respondent No. 1 to 4, Mr TCG Swamy, learned counsel for respondents 5 and 6.

7. The learned counsel for the applicants persuasively argued that Annexure-A/1 order is an executive order issued by the 2nd respondent in modification of the specific requirements of essential qualifications in Annexure-A/2 Recruitment Rules and the essential qualifications prescribed by the recruitment rules cannot be diluted or relaxed by issuing executive orders. In support of the contentions, the learned counsel for the applicants relied upon the decisions of the Hon'ble Supreme Court in *Reserve Bank of India -v- N C Paliwal & Ors* 1976 (4) SCC 838; *KC Gupta and ors -V- Lt. Governor of Delhi and ors* 1994 (Supp) (3) SCC 408; *Kerala State Electricity Board -v- N. Sukesen & Ors*. 1996(9) SCC 397; *SP Shivprasad Pipal -v- Union of India and*

ors, (1998) 4 SCC 598; Feroz Ahmed-v-Delhi Development Authority and ors, 2007 (1) SCC L&S) 212).

8. Learned counsel for respondents pointed out that the averments of the applicants are misconceived and the question regarding merger of the Ministerial cadre and Data Entry Operators and their seniority and inter-se-seniority between them have already been settled before issuance of the Annexure-A/1 and also by subsequent instructions and clarifications issued by the Department.

9. We have gone through the record and the judgment of the Hon'ble Supreme Court referred to as the applicants' side. The main ground for challenge is that the impugned order is seeking to modify the provisions made by the Recruitment Rules by executive instructions. Annexure-A/1, as it reads, clarified that erstwhile Data Entry Operators Grade-A, B and C, who were already confirmed in the pre-restructured cadre of Data Entry Operator are not required to pass the confirmation examination again on re-structuring. This was issued in modification of the earlier instruction issued by letter dated 7.1.2005 of the

Ministry (Annexure-A/10) The Instruction dated 7.1.2005 was issued to all Chief Commissioners, All Commissioners of Customs and Central Excise and all Directorate Generals/Commissioners of Directorates, to clarify various doubts raised by the subordinate officers regarding departmental examination, confirmation and other related issues. Point No. 5 therein pertains to the case in hand, and it confirmed the position that as per DOP&T's letter dated 24.9.1992, the DEOs, who were promoted and re-designated are required to appear in the departmental examination for confirmation before they can be promoted to a higher grade as the guideline contained the stipulation that if the new post is not in the same line or discipline as the old post in which he has been confirmed reconfirmation becomes necessary. Thereafter, the respondents on various representations received from the Staff Associations, re-examined the matter in consultation with the DOP&T, which clarified that confirmation in the Government service is a one time affair and re-structuring cannot take away the confirmation status already granted to an employee. In the wake of this

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clarification, the instruction issued earlier had to be modified and the Annexure-A/1 has been issued. We are unable to see any nexus between the Recruitment Rules and the Annexure-A/1 letter. It is true that Annexure-A/1 has modified the earlier instructions issued under Annexures- A/8, A/9 and A/10, and it has to be taken as a further clarification of these letters conveying the decision taken by the Department in consultation with the Ministry of DOP&T. The rationale of the decision was based on the context of re-structuring and DOP&T's stand that restructuring does not deprive the employee of confirmation status already granted. To appreciate this point better, we may see the provisions contained in Rule 4(2) of the Recruitment Rules for Tax Assistants, which have been extracted hereinabove. The wordings of the Rule makes it clear that the person holding the post of Data Entry Operator Grade-A appointed under these rules as Tax Assistant shall, within two years from the date of such appointment as Tax Assistant, pass the Departmental Examination as conducted by the competent authority, failing which he shall not be entitled to get any

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further increment. There is no reference in the provision to any examination for confirmation. The respondents have clearly stated in para 12 of the reply that Rule 4(2) of the Recruitment Rules never prescribed any examination for confirmation. It is a departmental examination conducted for the purpose as stated in the rule itself. Therefore, the contention of the applicants that Annexure-A/1 modifies or nullifies the Recruitment Rules is not tenable and we do not find any illegality in the order itself as it has been issued on the ground cited hereinabove, in consultation with the nodal department of Personnel and Training.

10. The other contention of the applicants is regarding the legality of the merger of the cadres and the inter-seniority between the different merged cadres. The entire question of merger had been under challenge in the various Benches of the Tribunal, before the Hon'ble High Courts as well as before the Hon'ble Supreme Court and it has now become a finality. It is too late in the day to agitate this point. It is already in the knowledge of the applicant that Annexure-A/6 order of the Madras Bench of the Tribunal, by which the Rule 4

of the Recruitment Rule was quashed, is now pending before the Hon'ble High Court of Tamil Nadu for final disposal. The respondents have also pointed out that the matter is sub-judice before the Hon'ble High Court of Tamil Nadu.

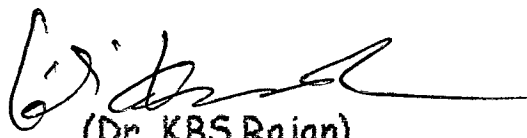
11. The real grievances of the applicants are only with reference to the promotion granted to the Data Entry Operators, who they claim are juniors and in respect of the inter-se-seniority fixed between the re-designated officers. The respondents have stated that the applicants' attempt to link these aspects with Annexure-A/1 order which dealt with entirely another subject matter. This, in our opinion, is an exercise in futility. Moreover, it is also admitted that the provisions of the Recruitment Rules are not under challenge in this Original Application. Promotions made to the Senior Tax Assistants are in accordance with the provisions of the Recruitment Rules and the respondents have also clarified that the adhoc promotions were given in relaxation of the Rules as per the relaxation granted by the Government of India, as stated above, and by now the period of relaxation is also over i.e. by 31.12.2003. The requirement of

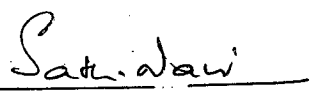
passing departmental examination has also been further fulfilled by these Tax Assistants and Senior Tax Assistants. As already mentioned earlier, the issue of inter-se-seniority is *sub judice*.

12. The judgments of the Hon'ble Supreme Court referred to by the counsel for the applicants are mainly on the questions of merger and inter-se-seniority and the general principles to be followed in such cases and as such are not applicable to the limited issue in hand. We do not find any relevance of these orders to the facts and circumstances of the instant case or the relief sought for in this application. Therefore, we do not think it necessary to go into the details of these decisions of the Apex Court.

13. In the light of the above discussions, we do not find any merit in the contentions of the applicants and accordingly the application stands dismissed. No costs.

Dated the 31st July, 2007


(Dr. KBS Rajan)
MEMBER-JUDICIAL


(Ms. Sathi Nair)
VICE CHAIRMAN